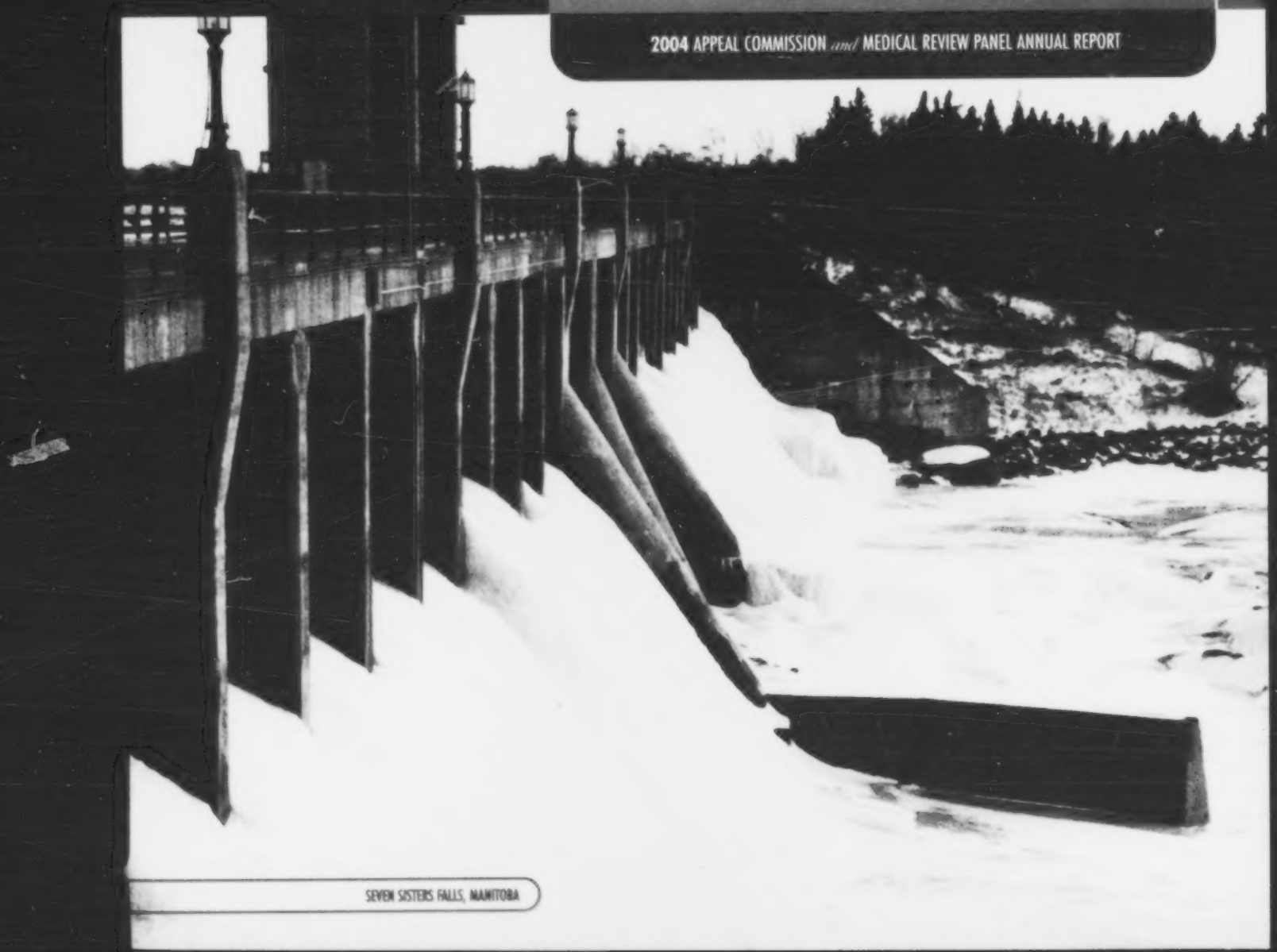
THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

COMMITTED to FAIRNESS

2004 APPEAL COMMISSION *and* MEDICAL REVIEW PANEL ANNUAL REPORT



SEVEN SISTERS FALLS, MANITOBA

INTRODUCTION

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2004 to December 31, 2004 inclusive.

The Appeal Commission is separate and independent from the Workers Compensation Board (WCB) and is the final level of decision making in the WCB appeal structure. The Appeal Commission has exclusive jurisdiction to hear and decide appeals that arise from decisions made by the Workers Compensation Board. The independence of the Appeal Commission ensures that appeals from workers and employers are heard by an impartial panel with no previous involvement or interest in the matters under appeal.

The Appeal Commission consists of full and part-time appeal commissioners who are appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under *The Workers Compensation Act* as a separate and independent process from the WCB and the Appeal Commission. Medical Review Panels are a process by which the WCB or Appeal Commission can pose questions to an independent panel of medical experts and obtain an impartial medical opinion on a worker's claim. The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or Appeal Commission.

The Minister responsible for *The Workers Compensation Act* appoints the Medical Review Panel Chair and Alternate Chair. The independence of the Chairs, and the ability of the employer and worker to select physicians with no previous involvement to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar is responsible for providing administrative support to both the Appeal Commission and Medical Review Panels

The Appeal Commission and Medical Review Panel activities and statistics are reported separately, as both activities are independent from the Workers Compensation Board.

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MISSION STATEMENT

To ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

VALUES

Quality Assurance

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision making, and accountability, while respecting differing and shared values and perspectives.

Public Integrity

The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision making process.

Responsive to Change

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

Interdependence

All Appeal Commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision making.

Respectful Work Environment

Appeal Commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

a message from the CHIEF APPEAL COMMISSIONER

I am pleased to present the annual report of the Appeal Commission for the year 2004.

Our report is titled Committed to Fairness. This commitment is reflected in our mission statement and is evident in our processes, hearings and decisions. Fairness is expected by our stakeholders and required by our statute. Anything less is unacceptable. The commissioners and staff strive at all times to meet this commitment.

The Appeal Commission plays an important role in Manitoba's workers compensation and administrative justice systems. The Appeal Commission is the final appeal body under *The Workers Compensation Act*. It provides an independent forum for the resolution of concerns for persons who are not satisfied with the decisions of the Workers Compensation Board. It also serves as the final appeal body under *The Victims' Bill of Rights*.

In March 2004, I was appointed the Chief Appeal Commissioner. It is both a pleasure and an honour to serve in this role. I hope during my term to make a positive and lasting contribution to the workers compensation system. I look forward to the challenges of this position.

I replaced Terry Sargeant who served as Chief Appeal Commissioner for three and a half years. Terry made a huge contribution to the Appeal Commission. His professionalism and integrity were recognized by all who dealt with him. We wish him the best in his new role as Chair of the Manitoba Clean Environment Commission.

The Appeal Commission operates with a system of full and part-time appeal commissioners. Timely and competent appointments are essential to the effective operation of the Appeal Commission. I am pleased to report that such appointments were made in 2004.

Our three full-time appeal commissioners, Margaret Day, Allan Finkel and Robert MacNeil, were all reappointed for further terms. These commissioners hear the majority of cases and are an integral part of the Appeal Commission's success. Three part-time appeal commissioners, Paul Challoner, Bob Malazdrewich and Bill Leake, were reappointed for further terms. As well, Christine Harapiak joined the Appeal Commission as a part-time appeal commissioner and presiding officer.

Two experienced members left the appeal commission. Kaye Dunlop, a part-time appeal commissioner and presiding officer completed her final case after 12 years of service and Gail Overgaard retired after three years of service.

As Chief Appeal Commissioner, I am appreciative of the qualifications, skills and commitment of the appeal commissioners.

In performing our services, appeal commissioners are supported by a group of dedicated and competent staff in the Office of the Registrar. We are grateful for their assistance and advice.

This report contains statistics which detail the work of the Appeal Commission. These statistics confirm the high performance level the Appeal Commission achieved in 2004. Of particular note is the increase in cases decided by the Appeal Commission from 159 in 2003 to 173 in 2004.

The Appeal Commission deals with many complicated factual, legal and medical issues. To develop and maintain our skills, a program of professional development seminars are scheduled throughout the year. In 2004, four sessions were conducted with topics ranging from upper limb injuries to issues regarding adjournment of hearings. In addition, full-time members of the Appeal Commission attended presentations on subjects such as trends in administrative law, use of plain language in decision writing, and reform of administrative tribunals.

During 2004, the Workers Compensation Act Review Committee conducted a review of *The Workers Compensation Act*. We know that legislative reform of any sort will have an impact at the Appeal Commission. We look forward to the release of the committee's report and recommendations.

I wish to thank all the commissioners and staff for their diligent work that allowed us to have another successful year. I especially want to thank them for welcoming and helping me to settle into my new position.

We look forward to 2005 with a sense of anticipation and excitement.

Sincerely,

Alan Scramstad

Alan Scramstad

about the APPEAL COMMISSION

The Appeal Commission was established by legislative amendment to *The Workers Compensation Act* (the Act) in July 1990. The Appeal Commission is the final level of appeal in the workers compensation system. The Appeal Commission operates separately and independently from the WCB and is solely responsible for hearing all appeals from workers and employers concerning WCB Review Office or Assessment Committee decisions.

The full and part-time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. The Act requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the Act. The Chief Appeal Commissioner is responsible for the operation and conduct of matters relating to the Appeal Commission as established by the Act.

The part-time commissioners are used when a full-time commissioner is in conflict on a case, to manage workloads, for vacation relief and to maintain their level of expertise.

The Appeal Commission's procedure is governed by Regulation 279/91, *Appeal Commission Rules of Procedure*. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar and the Appeal Panels to ensure that the integrity of the appeal system is protected and maintained.

Panels of three commissioners, representing public, worker and employer interests respectively, hear appeals. The commissioner representing the public interest is the Presiding Officer of the panel and is responsible for the conduct of the hearing/review and panel meetings.

Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness. All parties to an appeal (i.e., the employer, worker and their representatives) are given an equal opportunity to present their case.

The Appeal Commission is a non-adversarial enquiry forum where parties with a direct interest in a matter provide oral or written evidence. An Appeal Panel has the ability to ask questions or obtain additional evidence which ensures that the panel has all the information necessary to reach a fair decision.

An Appeal Panel may hear witnesses from either or both parties and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a paper review of the file which would not require the attendance of any party.

The Appeal Commission also acts as the final level of appeal for the claims of victims of crime filed under the provisions of *The Criminal Injuries Compensation Act, The Victims' Rights Act* and *The Victims' Bill of Rights.*

method of APPEAL

Appellants can request one of three forums of appeal, however, the Chief Appeal Commissioner has the final authority to determine the most appropriate forum for an appeal.

NON-ORAL FILE REVIEW

An appeal can be decided by a file review if all the issues are easy to understand from the file documents. The panel reaches a decision after it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a non-oral file review, interested parties do not have to appear in person before the appeal panel. Some examples of appeals commonly decided by file review are:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment where no wage loss is involved
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute

STANDARD ORAL HEARING

Standard oral hearings are the most common appeal forum. If the appeal is more complex, it will probably be decided by an oral hearing. In this method, the party requesting the hearing must appear in person at the hearing. At the hearing, parties present the appeal to the panel verbally. The appeal can be supported by a written submission. Witnesses may attend in support of the appeal. The Appeal Commission, however, must be advised if witnesses will be attending. Some examples of appeals commonly decided by a standard oral hearing are:

- where additional evidence is to be presented
- where there is a fatality
- where serious injury has occurred
- where an occupational disease is involved
- where the decision may have an important impact on how WCB policy is interpreted or applied
- where the facts are in dispute or credibility is an issue

EXPEDITED ORAL HEARING

Occasionally, oral hearings may be expedited. This means that a decision is given immediately following the hearing and written reasons are provided at a later date. In this method, the party requesting the hearing must appear in person at the hearing to present their appeal. Some examples of appeals decided by an expedited oral hearing are:

- where the appeal panel feels an immediate decision is necessary
- where no additional evidence is required by the panel
- applications for periods of retroactive benefits where the worker has returned to work

General Hearing/Review Information

- Hearings and reviews are scheduled as soon as parties are fully prepared to proceed.
- Hearings are closed to the public. In limited circumstances, a hearing may be open to the public if permission is obtained from all parties.
- A worker's access to their file information is governed by subsection 101(1.1) of the Act and the employer's access is governed by subsection 101(1.2). File access generally takes up to six weeks but can take longer if objections to the release of information are received.
- Any written evidence concerning an appeal must be provided to the Registrar no later than five business days before the file review or hearing.
- A court reporter records the proceedings at all oral hearings. After the hearing, a transcript is produced and becomes part of the file record.
- The Appeal Commission provides interpreter services free of charge where needed.
- Pursuant to Regulation 279/91, *Appeal Commission Rules of Procedure*, a decision of a panel shall be rendered within 60 days of the completion of the file review or hearing.

AFTER AN APPEAL

The Appeal Commission cannot amend, clarify or change its decision once it has been rendered. This means that once a decision is made, the panel cannot provide further reasons, clarification or explanations for its decision. As well, the panel cannot consider further arguments or submissions by the parties to the appeal once a decision has been made.

The Act provides two limited options for reconsideration of an Appeal Commission decision.

Under section 60.9 of the Act, if a party to an appeal feels the panel has acted outside its authority or has erred in applying Workers Compensation legislation, policy or regulations, the party can approach the WCB Board of Directors. The party must identify the alleged error made by the panel. If the Board of Directors determines that an error has been made, the Board can stay or set aside the decision and order that the case be re-heard. The Board of Directors is unable to set aside a decision of the Appeal Commission if it has acted within its jurisdiction.

Under subsection 60.91(1) of the Act, if a party with a direct interest acquires new evidence after the hearing, the party may apply to the Chief Appeal Commissioner to request reconsideration of the previous decision. If the Chief Appeal Commissioner decides that the evidence meets the requirements of the Act, a new hearing on the matter is ordered. The Chief Appeal Commissioner does not have a general power of reconsideration and is unable to consider further arguments about the evidence that was before the original panel.

Subsection 60.91(2) describes the nature of the evidence and states:

The Chief Appeal Commissioner may direct the Appeal Commission to reconsider its previous decision where the Chief Appeal Commissioner considers that the evidence referred to in subsection (1) is substantial and material to the decision, and

(a) did not exist at the time of the previous hearing before the appeal commission, or

(b) was not known to the applicant at the time of the previous hearing before the appeal commission and could not have been discovered through the exercise of due diligence.

The Chief Appeal Commissioner and full and part-time commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

There are currently four full-time commissioners: (l to r)

Allan Finkel,
Appeal Commissioner (Employers)

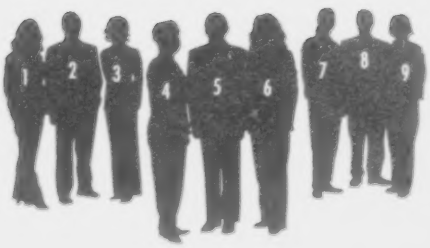
Robert MacNeil,
Presiding Officer (Public Interest)

Margaret Day,
Appeal Commissioner (Workers)

Alan Scramstad,
Chief Appeal Commissioner (Public Interest)

the full-time APPEAL COMMISSIONERS

the part-time APPEAL COMMISSIONERS



As of December 31, 2004, the Appeal Commission had eleven part-time appeal commissioners, four representing the public interest, four representing workers and three representing employers. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase and to maintain their level of expertise.

The Appeal Commission thanks Terry Sargeant (2), Kaye Dunlop (3) and Gail Overgaard, who have completed their last cases, for their dedicated service and contribution to the Appeal Commission.

The Appeal Commission welcomes Christine Harapiak (7), who was appointed as a part-time appeal commissioner.

CURRENT ROSTER

PUBLIC INTEREST
Christine Harapiak (7)
Mira Thow (1)
Sherri Walsh (6)
Byron Williams

REPRESENTING WORKERS
Chris Monk (5)
Bob Malazdrewich
Bill Leake
Linda Butler (4)

REPRESENTING EMPLOYERS
Paul Challoner (8)
Jane MacKay (9)
Bonnie Popowich

2004 HIGHLIGHTS

- Terry Sargeant resigned in January 2004 to commence his duties as the Chair of the Manitoba Clean Environment Commission.
- Alan Scramstad was appointed as Chief Appeal Commissioner in March 2004.
- Kaye Dunlop and Gail Overgaard handled their last cases in 2004 after several years of service.
- Christine Harapiak was appointed as a part-time appeal commissioner representing the public interest in January 2004.
- Terry Sargeant, former Chief Appeal Commissioner, was a guest lecturer at the University of Manitoba Faculty of Law's course "Clinical Administrative Practice".
- The Workers Compensation Act Review Committee conducted a review of *The Workers Compensation Act* and will release their report and recommendations in 2005.

COMMISSIONER WORKSHOPS *(continuing education)*

Full and part-time appeal commissioners attend workshops throughout the year on topics related to workers compensation and administrative tribunals. As part of their training, workshops were held in 2004 on:

- Myofascial Pain & Fibromyalgia
- Shoulder Girdle Injuries
- Issues of Adjournment
- Common Elbow, Wrist & Hand Injuries

In addition to the above workshops, the full time commissioners participated in the following external training:

- Manitoba Bar Association's Midwinter session "Charter Issues"
- Council of Canadian Administrative Tribunals conference "Bringing Administrative Justice to the People of the World" (ON)
- Association of Workers' Compensation Boards of Canada Congress "Scaling New Heights" (YK)
- British Columbia Council of Administrative Tribunals conference "Diversity of Tribunals - Once the Dust Has Settled: Back to Basics"
- Canadian Bar Association conference "Fixing the System: Bringing Transparency & Accountability to the Law" (ON)
- Conference of Ontario Boards & Agencies conference "Faster, Better, Cheaper: Reflections on efficiency and fairness – conflicting demands or impetus for innovation?"

APPEAL COMMISSION STATISTICS

* excludes Criminal Injuries/Victims' Rights appeals

TOTAL APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals carried forward from previous year	31	27	33
Panel hearings held (by appeal)	143	128	111
Panel reviews held (by appeal)	40	39	41
Cases in process	[38]	[31]	[27]
Cases adjourned	[3]	[4]	[3]
TOTAL APPEALS DECIDED	**173**	**159**	**155**
Appeals accepted	51	42	51
Appeals partially accepted	16	23	15
Appeals not accepted	106	94	89
TOTAL APPEALS DECIDED	**173**	**159**	**155**
Percentage accepted	29.5%	26.4%	32.9%
Percentage partially accepted	9.2%	14.5%	9.7%
Percentage not accepted	61.3%	59.1%	57.4%

POST HEARING ACTIVITIES (Cases in process)	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Cases awaiting further information requested by the Panel	11	11	17
Cases awaiting decision	3	3	1
Decision writing	24	17	9
TOTAL CASES IN PROCESS	**38**	**31**	**27**

TOTAL CLAIMANT APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	46	40	47
Appeals partially accepted	16	23	15
Appeals not accepted	88	81	67
TOTAL CLAIMANT APPEALS	**150**	**144**	**129**
Percentage accepted	30.6%	27.8%	36.4%
Percentage partially accepted	10.7%	16.0%	11.6%
Percentage not accepted	58.7%	56.2%	52.0%
Number of claimants represented by:			
Legal Counsel	18	19	20
Union Representative	26	40	34
Worker Advisor	52	28	27
Advocates	14	7	8
Self Representation	37	43	36
Other	3	7	4
TOTAL	**150**	**144**	**129**

TOTAL EMPLOYER APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	4	2	3
Appeals partially accepted	0	0	0
Appeals not accepted	18	13	19
TOTAL EMPLOYER APPEALS	**22**	**15**	**22**
Percentage accepted	18.2%	13.3%	13.6%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	81.8%	86.7%	86.4%
Number of employers represented by:			
Legal Counsel	2	0	2
Advocate	3	3	3
Employer Agent	15	10	13
Self Representation	2	2	4
TOTAL	**22**	**15**	**22**

BREAKDOWN OF EMPLOYER APPEALS TO CLAIMS/REHABILITATION ISSUES	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	3	2	1
Appeals partially accepted	0	0	0
Appeals not accepted	15	11	14
TOTAL	18	13	15
Percentage accepted	16.7%	15.4%	6.7%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	83.3%	84.6%	93.3%

BREAKDOWN OF EMPLOYER APPEALS TO ASSESSMENT ISSUES	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	1	0	2
Appeals partially accepted	0	0	0
Appeals not accepted	3	2	5
TOTAL	4	2	7
Percentage accepted	25.0%	0%	28.6%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	75.0%	100%	71.4%

TOTAL THIRD PARTY APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	1	0	1
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	3
TOTAL THIRD PARTY APPEALS	1	0	4
Percentage accepted	100%	0%	25.0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	0%	0%	75.0%
Number of third parties represented by:			
Legal Counsel	1	0	4
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocates	0	0	0
Self Representation	0	0	0
Other	0	0	0
TOTAL	1	0	4

TOTAL APPEALS BY CASE TYPE

CLAIMS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	44	42	47
Appeals partially accepted	13	19	14
Appeals not accepted	97	85	77
TOTAL	154	146	138
Percentage accepted	28.6%	28.8%	34.1%
Percentage partially accepted	8.4%	13.0%	10.1%
Percentage not accepted	63.0%	58.2%	55.8%

REHABILITATION	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	5	0	2
Appeals partially accepted	3	4	1
Appeals not accepted	6	7	7
TOTAL	14	11	10
Percentage accepted	35.7%	0%	20.0%
Percentage partially accepted	21.4%	36.4%	10.0%
Percentage not accepted	42.9%	63.6%	70.0%

ASSESSMENTS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	2	0	2
Appeals partially accepted	0	0	0
Appeals not accepted	3	2	5
TOTAL	5	2	7
Percentage accepted	40.0%	0%	28.6%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	60.0%	100%	71.4%

TOTAL CASES DECIDED	173	159	155

RECONSIDERATIONS UNDER SECTION 60.91 OF THE ACT	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Number of requests received	9	15	9
Reconsiderations granted	2	6	1
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

FILE ACCESS APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Claimant appeals	7	10	9
Employer appeals	2	2	6
TOTAL FILE ACCESS APPEALS	**9**	**12**	**15**

CRIMINAL INJURIES/VICTIMS' RIGHTS APPEALS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Appeals accepted	0	1	1
Appeals partially accepted	0	0	1
Appeals not accepted	3	7	7
TOTAL APPEALS	**3**	**8**	**9**
Percentage accepted	0%	12.5%	11.1%
Percentage partially accepted	0%	0%	11.1%
Percentage not accepted	100%	87.5%	77.8%

	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
TOTAL ISSUES ADDRESSED	259	199	195

MOST COMMON ISSUES ADDRESSED	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Entitlement to wage loss benefits (post 1992)	74	58	56
Claim acceptance	47	45	32
Is present condition related to the compensable injury	34	20	23
Has claimant recovered from the compensable injury	10	12	10
Entitlement to medical aid payment	10	7	10
Request for Medical Review Panel	10	4	11
Deeming process	6	5	4
Is claimant capable of modified duties	5	2	0
Effective date of the permanent partial impairment award	4	2	0
Has claimant been overpaid benefits	4	3	2
Entitlement to a permanent partial impairment award	3	7	0
Entitlement to wage loss benefits (rehabilitation)	3	0	5
Is the individual an independent contractor or a worker	3	0	0
Should the permanent partial impairment award be reduced	3	0	1
Mitigation	3	0	0
Has the permanent partial impairment award been correctly calculated	3	2	1

SERVICE LEVELS

The Service Level Report was instituted in 1997. This tracking system allows the Office of the Registrar to review the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.

The Appeal Commission personally contacts all interested parties with respect to the scheduling of hearings. Historically, the Appeal Commission has been able to schedule a hearing or review within six weeks of receiving an appeal. It was found, however, that this does not allow sufficient time for the parties to fully prepare.

According to Regulation, an appeal panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

SERVICE LEVEL STATISTICS (based on decisions published as of December 31, 2004)	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Average time from date appeal received to date of hearing	14.02 wks	11.38 wks	11.31 wks
Average time from hearing date to decision published	9.87 wks	11.12 wks	11.25 wks
Average time from date of decision to decision published	5.59 wks	5.27 wks	5.12 wks
TOTAL TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	**23.89 wks**	**22.50 wks**	**22.56 wks**

*Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.

Dr. Gary Beazley, Chairperson, and
Dr. Mallory Fast, Alternate Chairperson

a message from the MEDICAL REVIEW PANEL CHAIRPERSON

I am pleased to present the annual report of Medical Review Panels for the year 2004.

Having served as chair since September 2003, I have gained more experience with the process which allows me to comment and make recommendations with a greater degree of confidence and conviction than one year ago.

I continue to be impressed with the Medical Review Panel process. The diligence of panel members and consultants in their review of the file documentation and in seeking out the facts of the case through a thorough interview process and examination of the worker remains commendable.

This is not to say, however, that the Medical Review Panel process is such that it cannot be improved. I shall comment on several areas where changes have occurred or are planned.

Over this past year, there has been a deliberate and ever-increasing focus on using a worker-centred approach to the conduct of panels. The goal of using this approach is to enhance satisfaction with the MRP process, whatever the outcome. In medicine, this approach is called the patient-centred clinical method and it has been shown to improve clinical outcomes and satisfaction with the process of care. At the panel level it provides the worker with repeated encouragement and opportunity to present and clarify his or her history, to express opinions and to ask questions. It is important that the worker ultimately feels that he or she has had the opportunity to say all that is necessary and that all of his or her opinions and questions have been acknowledged or answered.

Last year I commented on the fact that very few primary care providers invited to attend panels choose to do so. This situation persists as does the common problem of a lack of sufficient medical detail in reports submitted.

The letter of invitation to the main care provider, usually a family physician but sometimes a specialist, has been enhanced. This enhancement stresses the importance and value of their attendance and urges them to participate in the process. The letter also asks that the physician bring the worker's health record.

The ultimate task for a Medical Review Panel is to respond to questions posed to it. Occasionally a panel is faced with one or more questions which present difficulties primarily because of panel members not being able to reach agreement on the meaning of the question(s). A workshop is planned to enhance knowledge and skills around question writing.

I found 2004 to be a year of considerable growth and satisfaction as I became more familiar with, and comfortable in, my role. I was assisted considerably in this by the staff of the Office of the Registrar and by the alternate chairperson. I look forward in 2005 to the continuing challenge of providing the best possible Medical Review Panel system for the workers of Manitoba.

Sincerely,

Dr. Gary Beazley

about MEDICAL REVIEW PANELS

Medical Review Panels enable the WCB or Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the Act allows the WCB or Appeal Commission the discretion to refer a medical matter to a Medical Review Panel for an independent opinion. This may occur when a claim is fairly complex and an independent expert opinion is required.

Subsection 67(4) of the Act establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor and this difference affects the worker's entitlement to compensation. A Medical Review Panel must be convened if a difference of opinion, as defined by subsection 67(1) of the Act, exists.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the Act appoints the Chairperson and the alternate Chairperson. The worker and employer select the other two panel members from a list of physicians, provided by the College of Physicians and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer, or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

2004 HIGHLIGHTS

- The Workers Compensation Act Review Committee conducted a review of *The Workers Compensation Act* and will release their report and recommendations in 2005.

MEDICAL REVIEW PANEL STATISTICS	YEAR ENDING 2004	YEAR ENDING 2003	YEAR ENDING 2002
Total MRPs convened	32	36	40
MRPs awaiting scheduling	3	17	12
INITIATED BY			
Primary Adjudication	21	30	22
Review Office	7	3	13
Appeal Commission	4	3	5
CONVENED UNDER			
Subsection 67(3)	7	8	12
Subsection 67(4)	25	28	28

MEDICAL REVIEW PANELS CONVENED BY AREA OF MEDICAL SPECIALTY	2004	2003	2002
Orthopedic Surgery	22	19	26
Physical Medicine & Rehabilitation	6	8	6
Neurology	2	3	1
Respiratory Medicine	2	0	1
Psychiatry	0	3	4
Cardiac Surgery	0	1	0
Neurosurgery	0	1	0
Orthopedic Surgery/Phys Med & Rehab	0	1	0
Neurosurgery/Orthopedic Surgery	0	0	1
Neurology/Respiratory Medicine	0	0	1
TOTAL	**32**	**36**	**40**

SERVICE LEVELS

The scheduling of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.

MEDICAL REVIEW PANEL SERVICE LEVEL STATISTICS	2004	2003	2002
Average time from date of request to date MRP held	24.32 wks	21.27 wks	22.90 wks
Average time from date of MRP to date when report is published	4.93 wks	6.12 wks	7.62 wks
Average time from date of request to when report is published	29.25 wks	27.39 wks	30.52 wks

office of THE REGISTRAR STAFF

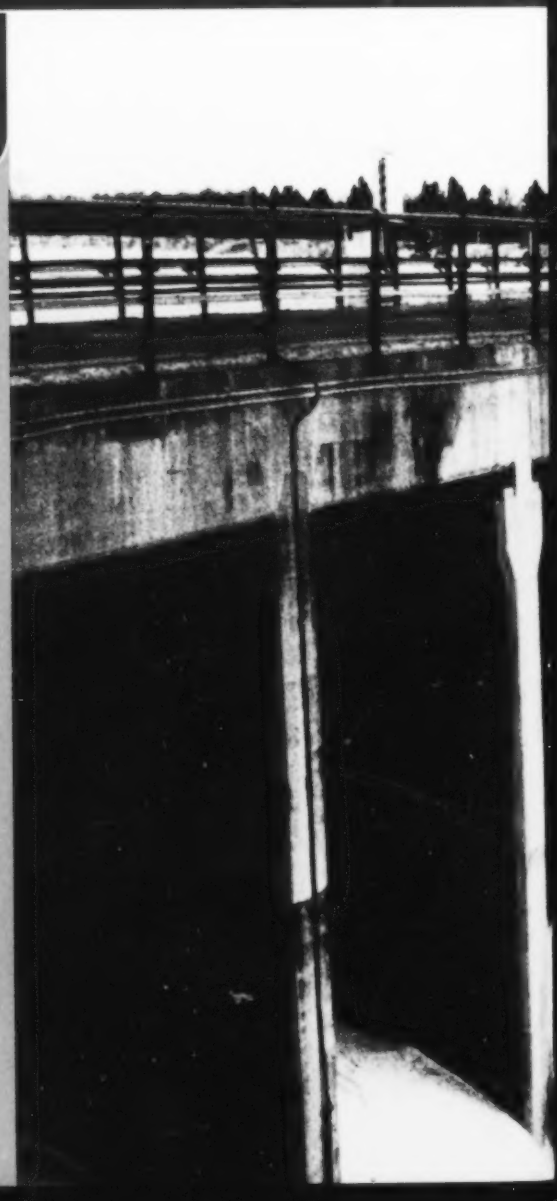
The administrative staff supports both the Appeal Commission and Medical Review Panels.

Peter Wiebe, Registrar (7)
Roger Lafrance, Assistant Registrar (3)
Marg Semler, Scheduling Coordinator (8)
Bonnie Miller, Recording Secretary (1)
Diane Daignault, Office Administrator (4)
Darlene Leclaire, Assistant Scheduling Coordinator (6)
Stephanie Michalow, Photocopy Clerk (2)
Stephanie Cambly, MRP Scheduling Coordinator (5)

Missing: Dr. Brian Onoferson, Medical Advisor

COMMITTED to FAIRNESS

2004 APPEAL COMMISSION *and* MEDICAL REVIEW PANEL ANNUAL REPORT



THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

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